

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

ELIZABETH RUIZ,	)	
as mother and natural guardian of ERIN ARTIS,	)	
and ELIZABETH RUIZ, Individually,	)	
Plaintiffs,	)	
	)	
v.	)	
	)	CIVIL ACTION NO.: 04-12119-PBS
THE UNITED STATES OF AMERICA	)	
Defendant.	)	
	)	

**PLAINTIFF'S EXPERT WITNESS DISCLOSURE**

NOW COMES THE PLAINTIFF, pursuant to the Court's initial scheduling order, and discloses the identity and expected testimony of her expert witness(es). Plaintiff reserves the right to supplement this disclosure based on further information that may be contained in the defendant's forthcoming disclosure, and any additional information obtained pending or during trial of this case.

**PLAINTIFF'S EXPERT WITNESS:**

**Daniel R. Neuspiel, MD, MPH, FAAP**  
**Associate Chairman of Pediatrics, Beth Israel Medical Center**  
**Associate Professor of Pediatrics and of Epidemiology and Population Health,**  
**Albert Einstein College of Medicine**  
**Beth Israel Medical Center, Suite 2J**  
**10 Union Square East**  
**New York, New York 10003**

Dr. Neuspiel is expected to testify based on his education, training and experience, as well as his review of the pertinent medical records, review of the materials generated during discovery in this matter, and evidence offered at trial.

Dr. Neuspiel is expected to testify as to the following facts:

1. Erin Artis was born on July 29, 1998
2. On November 20, 2002, Erin was seen at the South Boston Community Health Center by Kathryn Quinn, M.D. Erin had a one week history of cough, slight rhinorrhea, but no fever.

3. There was no history of asthma noted at this time or in prior visits. Crackles were noted in her left lung. No chest x-ray was taken. She was diagnosed with pneumonia, and treated with azithromycin. She was advised to return if worse or not improved in two days.
4. On December 11, 2002, Erin came to the South Boston Community Health Center for a regular check-up by Dr. Kathryn Quinn. She had no documented complaints at that time. There was no history of asthma noted at this time. Her dietary intake was noted to be normal. The examination showed a labial adhesion. Her chest examination was noted to be normal. A blood test done at this visit was noted to have slight anemia on 12/13/02, and oral iron medication was prescribed.
5. On January 22, 2003, Erin was seen at the South Boston Community Health Center by (signature illegible) for a cough, runny nose, and headache. There was no history of asthma noted at this visit. Her lungs were noted to be clear. She was diagnosed with a viral upper respiratory infection and prescribed a cold medication.
6. On February 6, 2003, Erin was seen at the South Boston Community Health Center by a registered nurse Nancy {signature illegible} R.N. for congestion, cough, and "hx asthma." A nurse's note indicates that she had audible wheezes. Her lung examination indicates "good air movement 1+ prolongation of exp. phase." There was no chest x-ray done. She was prescribed albuterol 2 puffs with spacer 4 times a day, to follow-up with her primary care provider if worsening, and to push fluids.
7. On March 31, 2003, Erin had ear piercing done by Jean Alekna, NP at South Boston Community Health Center. On the "Consent for Ear Piece" form, the history is indicated as: PMH negative, no medications. There is no indication of asthma on this form.
8. On April 17, 2003, there is a print report of "Adolescent Pediatrics: F/U Asthma" by Dr. Neil Beneck at South Boston Community Health Center. Under "Asthma — Initial Hx" is the question "Ever had a chest x-ray consistent with asthma?" with the response "No."
9. On May 19, 2003, there is a print report of "Same Day Care: asthma" by Dr. Charles Mills at South Boston Community Health Center. A note from Linda Doherty indicates "pt here for wheezing on many meds." The History of Present Illness indicates that Erin has a "hx of asthma x 1 yr" with daily symptoms. She was using albuterol via nebulizer, meter dose inhaler, and oral syrup, as well as Singulair 5 mg daily. Environmental changes at home did not change her symptoms. There was a strong family history of asthma noted. Her examination indicated audible coarse breath sounds. She was diagnosed with severe persistent asthma, referred to asthma/allergy clinic, ordered a home nebulizer, and continued on her same medications. No chest x-ray was done.
10. On May 20, 2003, a referral form for "Asthma/allergic (Pedi)" signed by Kimberly Smith PA-C indicates a diagnosis of severe persistent asthma, poor control on albuterol MDI, syrup and Singulair 5 mg per day.

11. On May 30, 2003, Erin received prescriptions for Flovent 44 meg, 2 puffs BID and Singulair 4 mg BID. Also, on the same day, a requisition for a lateral neck x-ray indicated "asthma hx but ? stridor as well (chronic)." A report of this x-ray revealed a coin within the upper thoracic esophagus.
12. On May 31, 2003, a gastroview swallow x-ray report showed narrowing of the esophagus caused by the coin, which was lodged anterior to the esophagus, mild mediastinal widening and deviation of the trachea to the left due to the coin. A chest x-ray done the same day confirmed these findings. On the same day, a rigid esophagoscopy and bronchoscopy was done, which found a "very dense stricture of the esophagus, along with purulent, foul smelling material and fibrin deposition along the wall of the esophagus." The scope could not be passed through the stricture. A bronchoscope showed a narrow airway, compressed in the area of the coin.
13. On June 1, 2003, Erin underwent a right exploratory thoracotomy, removal of mediastinal coin, placement of 2 chest tubes, laparoscopic gastrostomy tube placement, central line insertion, and arterial line insertion.
14. Barium swallow examinations on June 17 and June 23, 2003 indicated continued small leaks into the mediastinum.
15. Erin was discharged on June 25, 2003, requiring gastrostomy tube feedings and several medications.

Dr. Neuspiel is expected to testify as to the following opinions

1. Doctor/patient relationships were established between Virginia Fitzgerald, M.D., Neil Beneck, M.D., Richard LaSpina, M.D., Kathryn Quinn, M.D., Charles Mills, M.D., John Doe, M.D. (signature illegible), and Jane Roe, M.D. (signature illegible) and Erin Artis.
2. Based on a reasonable degree of medical certainty, Virginia Fitzgerald, M.D., Neil Beneck, M.D., Richard LaSpina, M.D., Kathryn Quinn, M.D., Charles Mills, M.D., John Doe, M.D. (signature illegible), Jane Roe, M.D. (signature illegible), and Nancy {signature illegible}, R.N. did not comply with the standards of care for evaluating this patient.
3. The standard of care required a chest x-ray early in the evaluation of her symptoms.

Specifically:

1. On November 20, 2002, Erin was diagnosed and treated for pneumonia by Kathryn Quinn, M.D. without a chest x-ray. The standard of care required an x-ray.
2. On February 6, 2003, Erin was incorrectly labeled as having a history of asthma by Nancy {signature illegible}, R.N. without prior documentation, and had audible wheezes, yet no chest x-ray was done. Foreign bodies are a cause of wheezing in this age group.

The standard of care again required a chest x-ray, which would probably have revealed a coin at that time.

3. On April 17, 2003, Dr. Neil Beneck diagnosed asthma in Erin's record, yet did not obtain a chest x-ray. Again, the standard of care required a chest x-ray.

Dr. Neuspiel is expected to testify to a reasonable degree of medical certainty that the above physicians' and nurses' deviations from the acceptable standards of medical care in a case such as this contributed to Erin's esophageal stricture, tracheal narrowing, respiratory symptoms, and her need for major surgery, including long term stomach tube feedings and likelihood of long-term complications. To a reasonable degree of medical certainty, earlier diagnosis of the ingested coin would have resulted in prevention of these problems before it eroded through the esophagus. Had the coin been discovered on November 20, 2002, on February 6, 2003, or even on April 17, 2003, it is more likely than not that these major surgical procedures and complications would have been avoided.

Respectfully Submitted,  
The plaintiff,  
by her attorney,

/s/ Barry D. Lang

Barry D. Lang, Esq.

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